IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION NO.416 OF 1995

TO

CIVIL REVISION APPLICATION NO.425 OF 1995

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?

2. To be referred to the reporters or not ?

3. Whether their lordships wish to see the fair copy of the judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judge?

M/S.SHRINATH TRADERS
VERSUS
CENTRAL BANK OF INDIA & ANR.

Appearance:
MR ASHOK L SHAH for Petitioner
MR JT TRIVEDI for Respondent No.1
MR MV CHOKSHI for Respondent No.2

Coram: S.K. Keshote,J

Date of decision: 23/03/1999

C.A.V. JUDGMENT

#. These civil revision applications arise from the common order of the Chamber Judge, Court No.10, City Civil Court, Ahmedabad, below ex.28, in summary suits between the same parties, though for different Hundis, and as such, the same are being taken up for hearing together and are being disposed of by this common order.

#. The facts of the case are taken from civil revision application No.416 of 1995 to understand the controversy and for decision of these civil revision applications.

#. The plaintiff-respondent No.1 filed a civil suit No.3301 of 1984 in the City Civil Court at Ahmedabad against the defendant-petitioner for recovery of amount of unpaid Hundis which were drawn by M/s.Bhalakia Mills Company Ltd. and accepted by the petitioner. The suits have been filed on different dates in the year 1984. After service of summons of the suit, the defendant-petitioner filed an application for grant of leave to defend the suit unconditionally. The application filed by defendant-petitioner for grant of unconditional leave to defend has been accepted by the learned trial court in the year 1986 on different dates. After the grant of unconditional leave to defend, the defendant-petitioner filed an application in all the suits purporting to be under Rule 83 of the Ahmedabad City Civil Court Rules, 1961, and prayer has been made therein that M/s.Bhalakia Mills Company Ltd. and Shri Ravindra C. Mehta be ordered to be impleaded as defendants in the suit. Chamber Summons have been taken out and thereon the learned trial Court has passed the order on 6th August 1986, by which the defendant-petitioner was granted leave to issue party-notices to aforesaid two parties. After service of notices and hearing the arguments of all the concerned parties, under the impugned order, i.e. 8.12.94, the said application came to be dismissed. Hence these revision applications before this Court.

#. The learned counsel for the petitioner contended that the learned trial Court has committed a material irregularity in exercising its jurisdiction in not impleading two persons aforesaid as party to the suit. It is next contended that they have accepted Hundis drawn by M/s.Bhalakia Mills Company Ltd., but the material supplied by that company to them was of inferior quality.

The Hundis were signed in blank form and there was a specific understanding and agreement arrived at between the parties that though the defendant signed the Hundis in blank form the blanks will be filled in subsequently. There was a further understanding between the parties that the amount of Hundis shall be paid by the mill-Company. Lastly, it is contended that under Rule 83, once the Judges Summons is issued, then normally the order should have been to implead these persons as party.

#. On the other hand, the learned counsel for plaintiff-respondent contended that the learned trial Court has not committed any illegality or material irregularity in exercising its jurisdiction in passing the impugned order which calls for interference of this Court under Section 115 of the Code of Civil Procedure, 1908. It has next been contended that Rule 83 of the Ahmedabad City Civil Court Rules, 1961 nowhere makes obligatory on the part of the trial court in Summary Suit to implead the third party as defendant in the suit merely on asking of the defendant. It is the discretion of the Court in a given case to implead or not to implead a third party as defendant in the suit. This discretion though has to be exercised judicially and on the basis of facts which have come on record the third party has rightly not been impleaded as defendants in this case. Lastly it is contended that it is a case where the defendant has accepted the Hundis drawn by the Company and the Bank has paid the amount of Hundis to the drawer. This application is nothing but only a malafide act on the part of the petitioner who has accepted Hundi to delay disposal of the suit. The drawer has taken money from Bank and when the same has not been paid within the period of limitation the Bank has no option except to file the suit and accordingly the suit has been filed in the year 1984 and still though more than 13 years have expired, the Bank could not get a single pie. This is nothing but only a manipulation of the defendant to delay disposal of the suit.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. A revisional jurisdiction has been conferred upon this Court under Section 115 of the Civil Procedure Code, 1908 which reads as under:

> 115. (1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate

Court appears --

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit.

By amendment of the Code in the year 1976, a proviso has been inserted to this Section, which reads as under:

Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding any issue, in the course of a suit or other proceeding, except where --

(a) the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding, or

(b) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made

#. It is not the case of the learned counsel for the defendant-petitioner nor it could have been that in passing of the impugned order, the learned trial court has exercised jurisdiction which otherwise does not vest in it by law or has failed to exercise jurisdiction so vested. So the only residuary clause (c) of sub-section (1) of Section 115 of the Code, remains and this is the only provision which has also been pressed in service by the learned counsel for the defendant-petitioner in this case.

#. In the case of D.L.F. Housing & Construction Company Pvt. Ltd. v. Sarup Singh, reported in AIR 1971 SC 2324, their Lordships, Supreme Court have observed, "the mass of reported cases only serve to show that the High Courts do not always appreciate the limits of their

jurisdiction under this Section", i.e. Section 115 of the Civil Procedure Code, 1908. Their Lordships of Supreme Court further observed in that case that the legal position was authoritatively laid down by the Privy Council as far back in 1894 in Raja Amir Hassan Khan v. Sheo Baksh Singh (1883-1884) 11 Indian Appeals 237 (PC). The Privy Council again pointed out in Balakrishna Udayar v. Vasudeva Iyer, 44 Indian Appeals 261 = AIR 1917 Privy Council PC 71, that this Section is not directed against the conclusions of law or fact in which the question of jurisdiction is not involved. The Court has further said that the view of the Privy Council aforesaid was approved by the Court in Keshar Deo v. Radha Kissan, 1953 SCR 136 = AIR 1953 SC 23 and has since been reaffirmed in numerous decisions.

##. The ratio of the cdecision laid down by their Lordships of Supreme Court in the case aforesaid is that while exercising jurisdiction under section 115 of the Civil Procedure Code, it is not competent to the High Court to correct errors of fact however gross or even errors of law unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. Clauses (a) and (b) of this Section on their plain reading quite clearly do not cover the present case.

##. The words "illegality" and "with material irregularity" as used in clause (c) of sub-section (1) of Section 115 of the Code of Civil Procedure Code, 1908, what the Hon'ble Supreme Court said in the case aforesaid do not cover either errors of fact or law; they do not refer to the decision arrived at but merely to the manner in which it is reached. The errors contemplated by this clause may relate either to breach of provision of law or to material defects of procedure affecting the ultimate decision and not to errors either of fact or law after the prescribed formalities have been complied with.

##. It is also a settled position of law that this court sitting under Section 115 of the Code of Civil Procedure, 1908, if deals with the matter ordinarily would have come to a different conclusion on the question of grant of impleading of third party as defendants in the suit hardly justify interference when there was no illegality or material irregularity committed by the court below in the manner of dealing with this question. This Court sitting under section 115 of the C.P.C. cannot deal with the matter as if it is an appeal.

##. The defendant-petitioner, though has taken this plea but has not produced any material in support thereof. In

case it would have been really a case of defective or inferior material supplied by the Company to the defendant-petitioner, the defendant-petitioner should have made hue and cry, but there is a total silence from his side in the matter. Similarly, in case it would have been really a case as what the defendant-petitioner is contending that on blank Hundis, his signatures were taken by the Company and further that there was a specific understanding and agreement arrived at between the parties that the defendant though has signed the blank Hundis, the amount of Hundis shall be paid by the Company, the petitioner should have produced material. This case of the petitioner has not been accepted by the Company and these are the highly disputed questions of fact. It is not a specific defence that appears to have been taken by petitioner. To prolong the suit and delay the passing of decree in the suit in favour of the plaintiff-respondent, this attempt has been made by the petitioner. The petitioner has been granted unconditional leave to defend, though I have my own reservation whether in such matters, unconditional leave could have been granted or not and to take the benefit of this situation, he has filed this application. After grant of unconditional leave to defend the suit, the suit would have been converted in long cause suit and it will take long time to come up for final hearing. Otherwise also, if we go by the facts of this case, the suits have been filed in the year 1984 and though we are in the year 1999, those are at the initial stage. It is a fact of which a notice can be taken that unscrupulous people in the country are finding ways to grab money of the Banks and this case is a perfect example thereof. The defendant-petitioner would have been a bonafide person, he should have taken all the care and should have made all the attempts to see that the Bank's money is paid within time stipulated for payment thereof either by himself or in case where there was some understanding or agreement between the Company as what it is alleged by the Company. It is a case where this application has been manufactured with the oblique object and purpose of delaying the proceedings and ultimately passing of the decree in favour of the Bank. It is not the case where the defendant has returned back the inferior and defective material to the Company. In case the unconditional leave would not have been granted, I am confident that such a frivolous and manipulated, manufactured or concocted application would not have come on the record of the suit. No material has been produced on record to show that at any point of time, the defendant-petitioner had informed the Bank that its liability to make payment of amount of Hundis is not

there for the reasons as now what the grounds have been given by the petitioner for impleading of the Company and its Director as a party to the suit. From these facts, safely, it can be presumed and inferred that this application is nothing but only a malafide application on the part of the defendant-petitioner. It is a case where the petitioner has made attempt to abuse the process of the Court.

##. The defendant-petitioner has admitted that he accepted the Hundis. It is also admitted case of the defendant that the Bank paid money to the drawer M/s.Bhalakia Mills Co. Ltd. The suit has been filed by the plaintiff-bank to claim amount of Hundis from the defendant-petitioner as the same has been accepted by him. The learned trial Court was perfectly correct and justified in its approach that all the averments made by the defendant in the application are not supported at this stage by any documentary evidence. I find sufficient merits in the finding of the learned trial Court that both the transactions are totally independent from each other. It is a case where the defendant-petitioner has come up with a case that though he has accepted the Hundis but as the material supplied by the Company was defective or of inferior quality, he signed blank Hundis, there was understanding between the Company and the defendant that the Company will make payment of Hundis to the Bank, is altogether a different cause of action of which a separate trial is to be taken. It is a dispute of defective or inferior material alleged to have been supplied to the defendant-petitioner or blank Hundis were signed or there was an agreement that the Company will make payment of Hundis, I fail to see how this case falls within the four corners of Rule 83 of the Rules. It is a case where the trial on this question cannot be made in the suit filed by the Bank for recovery of amount of Hundis which has been paid to the defendant-petitioner and the defendant-petitioner does not dispute the same. The matter would have been different where the Hundis would not have been drawn upon the petitioner, he would not have accepted Hundis and the amount would not have been paid to drawer. Once he admitted the acceptance of Hundis by him, this type of dispute now sought to be raised for decision inter-se the defendant and the third party cannot be permitted and rightly has not been permitted by the trial Court on the application filed by the petitioner under Rule 83 of the Rules. This claim of the petitioner stands on a different cause of action, the facts and grounds and for adjudication of this dispute and for recovery of this amount from third party of the Hundis, the only course

would have been available to the petitioner is to file a separate suit against the third party. The issue in the suit and now sought to be raised by applicant under Rule 83 of the Rules as rightly pointed out by the learned trial Court are totally different and independent of each other and cannot be said to be a subject of the same transaction.

##. The matter can be looked into from different angle also. Even if it is taken that the goods or material supplied by the company to the petitioner was of inferior quality, the defendant-petitioner signed blank Hundis and there was some agreement and understanding between the Bank and the petitioner that the Company will make payment of Hundis, then too, I fail to see what for the petitioner waited for filing of the suit by the Bank and then to file application under Rule 83 of the Rules. The Hundis are of the year 1982. The due date of Hundis were varying from April 1982 to September 1982. The present suit has been filed by the bank in the year 1984 and unconditional leave to defend the suit has been granted in the year 1986 by the City Civil Court. The defendant has not filed the suit for recovery of this amount from the Company. Limitation is prescribed for filing of such suit which would have expired much before filing of the application by the petitioner under Rule 83 of the Rules. The very fact that the defendant-petitioner has not filed any such suit and only after grant of unconditional leave to defend the suit to him by the learned trial Court, he filed this application goes to show that it is a malafide application. In case the application is granted and the third party is permitted to be impleaded as defendant, then what the petitioner will get an adjudication of his alleged dispute with Company though by passing of time, the claim of the petitioner would have become barred by limitation. It is not out of the context to state that no party can be permitted to be impleaded as a third party - defendant in the suit under Rule 83 of the Rules where the alleged claim of the defendant against the third party by that time has become barred by limitation. The learned trial Court, in this case, has not committed any error in holding that it is not a fit case where the third party can be impleaded as a party in the suit. Rule 83 of the Rules nowhere contemplates nor it could have been contemplated nor it could have been the intention of the rule making authority that in case the defendant in a summary suit applies for impleading of third party as defendant, the Court has to pass order of impleading of the third party as defendant or it is a matter of course or right of the defendant to get third party impleaded in the suit. In case this contention of

the learned counsel for the petitioner is accepted, then the Court will have no discretion where the application under Rule 83 of the Rules has been filed by the defendant, except to implead the third party as a defendant in the suit, though the claim as made by the defendant against the third party, by passing of time, would have been barred by limitation.

##. The proviso to sub-section 1 of Section 115 provides that even if the case falls under any of the clauses (a), (b) or (c) of this provision, still the revisional court may decline to interfere with the impugned order where in case that order is set aside, it will result in final disposal of the suit or where it is allowed to maintain it will occasion failure of justice and will cause irreparable injury to the party against which it is made. Though the learned counsel for the plaintiff-respondent, during the course of argument has raised contention that the order impugned in this civil revision application does not fall in the category of case decided, even if this question is not gone into, touched and decided by this Court, still it is true that even if this order is set aside the suit filed by the plaintiff-respondent will not stand disposed of finally.

##. In case this order is allowed to maintain, it will not occasion failure of justice or will cause injury to the defendant-petitioner. The defendant-petitioner has independent right to have settled his dispute with the company. It is a different matter that the defendant-petitioner does not want to pay money of the bank and further has made attempt to delay recovery of that money from him by the bank, but in case he would have been a bonafide person, a true businessman and an honest person, he should have paid this amount to the bank and whatever dispute was there in between it and the Company, should have been taken out by him. But in fact, this course has not been adopted. The learned trial Court is perfectly legal and justified to hold that it is a separate and distinct cause of action in between the defendant and the third party and that in the facts of this case it cannot be allowed to be agitated in the suit filed by the plaintiff-respondent bank. So in view of the fact that by not impleading the third party as defendant in this case, it cannot be said that the defendant-petitioner would have become remediless. It is a matter to be noticed that this type of persons want to play with the money of the Bank and adopt all the tactics, means and methods to delay the suit filed by the Bank for recovery of its dues. The learned trial Court has passed a just and reasonable order and otherwise

also, it cannot be said to be a case where it has committed any illegality or material irregularity in exercise of its jurisdiction in this case.

##. In the result, these civil revision applications fail and the same are dismissed with costs which are quantified to Rs.1,000/= in each civil revision application to be paid to the plaintiff-respondent-Bank.

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(sunil)